

STATEMENT OF EMERGENCY
201 KAR 35:055E

This emergency administrative regulation amendment is being promulgated to address an imminent threat to public health, safety, or welfare caused by the shortage of qualified counselors available to treat individuals during the current substance abuse crisis. Further, this emergency amendment is being promulgated to meet an imminent deadline imposed by state statute, namely SB 191. SB 191, signed by the Governor on April 24, 2020, and effective on March 1, 2021, amends KRS 309.080 to 309.089 to create two (2) additional credentials for drug and alcohol counseling. These credentials are administered and enforced by the Kentucky Board of Alcohol and Drug Counselors ("Board"). Among other things, KRS 309.0813, as amended by SB 191, requires the Board to promulgate administrative regulations to administer and enforce the new credentials. This statutory change required the amendment of nine (9) regulations and nineteen (19) forms. The Board has been diligently working on these regulatory amendments and forms, since the passage of SB 191. This emergency amendment will allow the Board to certify applicants for the two (2) new credentials created by SB 191 and regulate them in compliance with the statute effective March 1, 2021. An ordinary administrative regulation is not sufficient, because of the imminent effective date of SB 191. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency regulation.

TIM CESARIO, Chair
ANDY BESHEAR, Governor

BOARDS AND COMMISSIONS
Board of Alcohol and Drug Counselors
(Emergency Amendment)

201 KAR 35:055E. Temporary registration or certification.

EFFECTIVE: March 5, 2021

RELATES TO: KRS 309.083, 309.0831

STATUTORY AUTHORITY: KRS 309.0813(1), (5), 309.083, 309.0831

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.0813(1) and (5) authorize the board to promulgate administrative regulations establishing the requirements for registering with the Board of Alcohol and Drug Counselors as a registered alcohol and drug peer support specialist, certified alcohol and drug counselor, licensed clinical alcohol and drug counselor associate, or licensed clinical alcohol and drug counselor. This administrative regulation establishes the requirements for temporary credentials.

Section 1. Application for Temporary Registration. (1) An applicant for temporary registration as a certified alcohol and drug peer support specialist may submit an application after the requirements established in KRS 309.0831(1), (2), (6), (7), and (10) are met.

(2) The application required by subsection (1) of this section shall be made by submitting a completed KBADC Form 1, incorporated by reference in 201 KAR 35:020. The application shall:

(a) Include a certification by the applicant that the:

1. Information in the application is true, correct, and complete to the best of his or her knowledge and belief; and

2. Applicant is aware that the board may take disciplinary action if the application contains a misrepresentation or falsification; and

(b) Be accompanied by:

1. A check or money order payable to the Kentucky State Treasurer for the application fee as required by 201 KAR 35:020, Section 1(1);

2. Proof of a high school diploma or equivalent;

3. A signed agreement to abide by the standards of practice and code of ethics approved by the board;

4. KBADC Form 2, Attestation of Recovery, in which the applicant declares that he or she has been in recovery for a minimum of one (1)~~[two (2)]~~ years from a substance-related disorder; and

5. A supervision agreement signed by the applicant and the applicant's supervisor.

Section 2. Application for Temporary Certification. (1) An applicant for temporary certification as a certified alcohol and drug counselor may submit KBADC Form 1, incorporated by reference in 201 KAR 35:020, after the requirements established in KRS 309.083(1), (2), (6), (7), and (10) are met.

(2) The application shall:

(a) Include a certification by the applicant that the:

1. Information in the application is true, correct, and complete to the best of his or her knowledge and belief; and

2. Applicant is aware that the board may take disciplinary action if the application contains a misrepresentation or falsification; and

(b) Be accompanied by:

1. A check or money order payable to the Kentucky State Treasurer for the application fee as required by 201 KAR 35:020, Section 1(1);

2. An official transcript for the highest level~~[all levels]~~ of education required for certification;

3. A signed agreement to abide by the standards of practice and code of ethics approved by the board; and

4. A supervision agreement signed by the applicant and the applicant's supervisor.];

Section 3. Period of Temporary Registration~~[Credential]~~. (1) The period of a temporary registration~~[credential]~~ shall be terminated upon the passage of two (2) years from issuance.

Section 4. Period of Temporary Certification. (1) The period of temporary certification shall be terminated upon the passage of two (2) years from issuance.

(2) The board may approve an extension of the period of a temporary certification ~~[credential]~~ for a maximum of two (2) years if a:

(a) Written request is submitted that is cosigned by the board approved supervisor; and

(b) One (1) of the following exists:

1. A circumstance delineated in 201 KAR 35:040, Section 8(1); or

2. The temporary certified alcohol and drug counselor~~[credential holder]~~ presents evidence of insufficient time to:

a. Complete supervision, training, or work experience; or

b. Successfully pass the required examination.

(3) The board shall not grant more than three (3)~~[two (2)]~~ extensions of the period of a temporary certification~~[credential]~~.

Section 5~~[4]~~. Incorporation by Reference. (1) "KBADC Form 2, Attestation of Recovery", March 2021~~[June 2015]~~, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Alcohol and Drug Counselors, 500 Mero St, 2 SC 32[911 Leawood Drive], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. The board's Web site address is: <https://adc.ky.gov>.

TIM CESARIO, Chair

APPROVED BY AGENCY: February 25, 2021

FILED WITH LRC: March 5, 2021 at 4:27 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this emergency administrative regulation shall be held at 9:00 AM on April A public hearing on this administrative regulation shall be held at 9:00 AM on April 26, 2021 at 500 Mero Street, 127CW, Frankfort, Kentucky 40601. In the event the building is not open to the public on April 26, 2021, including if the declared State of Emergency in Executive Order 2020-215 and the State of Emergency Relating to Social Distancing in Executive Order 2020-243 are not rescinded by April 26, 2021, this hearing will be held by video teleconference, in which event members of the public wishing to attend may utilize the following link: Join from PC, Mac, Linux, iOS or Android:

<https://us02web.zoom.us/j/83379565231?pwd=VUF1MThJYTZnbmNA1WmxMZEt0RCtyZz09>, Password: 930689, Or Telephone: Dial: USA 713 353 0212, USA 8888227517 (US Toll Free), Conference code: 995892. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 PM on April 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Kevin R. Winstead, Commissioner, Department of Professional Licensing, 500 Mero Street, 237CW, Frankfort, Kentucky 40601, phone (502) 782-0562, fax (502) 564-4818, email KevinR.Winstead@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin R. Winstead

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the application process for an individual to obtain a temporary registration or certification.

(b) The necessity of this administrative regulation: The necessity of this regulation is to provide the board with regulatory control of those individuals who are engaged in peer support services or alcohol and drug counseling prior to full credentialing.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the requirements for obtaining registration or certification.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation establishes the application process for an individual to obtain a temporary registration or certification

(2) If this is an amendment to an existing administrative regulation, provide a brief summary

of:

(a) How the amendment will change this existing administrative regulation: The amendment will change the existing administrative regulation by: (1) replacing the requirement that an applicant for registration as a temporary registered alcohol and drug support specialist attest to two (2) years of recovery from a substance-abuse disorder with one (1) year; (2) replacing requirement that applicant provide transcripts of all levels of education with the highest level of education; (3) making the period of temporary certification two (2) years; (4) clarifying that a credential holder in Section 4 is a temporary certified alcohol and drug counselor; (4) replacing requirement that the board not grant more than two (2) extensions of the period of temporary certification with three (3); (5) updating the board's address; and (6) adding the board's Web site address.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to conform to legislative changes to KRS 309.0831(7) (effective March 1, 2021) and to allow temporary certificate holders additional time to complete requirements for certification.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes. KRS 309.0831(7) (effective March 1, 2021) requires an applicant for registration as an alcohol and drug peer support specialist to attest to being in recovery for a minimum of one (1) year from a substance-related disorder. Prior to March 1, 2021, KRS 309.0831 required an applicant be in recovery for two (2) years. The amendment also conforms to KRS 309.0813(1) and (5) (effective March 1, 2021), which requires the board to promulgate administrative regulations pursuant to KRS Chapter 13A to define the process to register with the board as registered alcohol and drug peer support specialist and a certified alcohol and drug counselor.

(d) How the amendment will assist in the effective administration of the statutes: The amendment assist in the effective administration of statutes by clearly defining for applicants the process for registration and certification.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board is unable to determine the exact number of persons who would be impacted by this regulation since the applications vary from month to month. Future applicants and persons credentialed by the board will be affected by this administrative regulation. As of February 1, 2021 there were 513 licensed clinical alcohol and drug counselors, 21 licensed clinical alcohol and drug counselor associates, 458 certified alcohol and drug counselors, 930 temporary certified alcohol and drug counselors, 95 temporary registered alcohol and drug peer support specialists, and 15 registered alcohol and drug peer support specialists.

(4) Provide an analysis of how the entities identified in the previous question will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: An individual can obtain a credential during the period the applicant is fulfilling the supervision requirement and course work requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: Licensees and permit holders will have no cost associated with the amendment. The applicant will have to pay a fee to apply for the temporary credential.

(c) As a result of compliance, what benefits will accrue to the entities: As a result of compliance, an individual has a credential during the period the applicant is fulfilling the supervision requirement and course work requirements.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: Initially, there is no additional cost to the administrative body to implement this administrative regulation.

(b) On a continuing basis: On a continuing basis, there is no additional cost to the administrative body to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by credential holders and applicants.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There are no increases in fees or funding required to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: There are no new fees or fee increases associated with the amendments to this administrative regulation. The fees for the temporary credentials are listed in 201 KAR 35:020.

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all credential holders. This regulation does not distinguish between similarly situated individuals on the basis of any factor.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Alcohol and Drug Counselors.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 309.0813(1) and (5), 309.083, 309.0831.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation will not generate revenue for state or local government.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation will not generate revenue for state or local government.

(c) How much will it cost to administer this program for the first year? There will be no additional cost to administer this program.

(d) How much will it cost to administer this program for subsequent years? There will be no additional cost to administer this program.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None